

Serial No. 10/517,099

Amend. In Resp. to Off. Act. of Oct. 31, 2007

UTILITY PATENT

B&amp;D No. P-US-PR-1080

**REMARKS**

Applicants have amended Claim 1. Currently in the application therefore are Claims 1-6, 8-9, 11, 17 and 21-23.

The Examiner rejected Claims 1-9, 17 and 21-23 under 35 USC § 103(a) as being unpatentable over US Patent No. 4,464,962 ("Myhre") in view of US Patent No. 4,249,442 ("Fittery"). In addition, the Examiner rejected Claim 11 under 35 USC § 103(a) as being unpatentable over Myhre in view of Fittery and US Patent No. 5,097,601 ("Pollak"). Reconsideration and withdrawal of these rejections are respectfully requested.

Admittedly, Myhre discloses a saw with two guide tracks in the working surface, and first and second fence portions slidably movable the guide tracks. However, Myhre, as previously admitted by the Examiner, discloses a table saw, not a chopping miter saw. Even if Myhre were to be combined with Fittery, the saw assembly would be movable upwardly towards the table for cutting a workpiece.

By contradistinction, Claim 1 requires "a saw assembly pivotally connected to the base, ... the saw assembly being movable downwardly towards the base for cutting a workpiece placed on the base." This effectively defines a chopping or miter saw, rather than a table saw. Therefore the Myhre/Fittery combination cannot render unpatentable Claim 1 and its dependent claims.

Furthermore, the Myhre fence is movable during a cutting operation to push a workpiece into the blade. See Myhre, col. 2, lns. 34-35 & col. 4, lns. 26-30. Similarly, Fittery provides slots for sliding a miter gauge and pushing workpieces into the blade. Pollak discloses a miter

Serial No. 10/517,099

Amend. In Resp. to Off. Act. of Oct. 31, 2007

## UTILITY PATENT

B&amp;D No. P-US-PR-1080

gauge that is slidable along a track for pushing a workpiece into the blade. Accordingly, none of these references disclose a stationary fence that provides a miter angle during the cutting operation.

By contradistinction, Claim 1 requires "the fence remaining stationary relative to the cutting plane during a cutting operation of a workpiece placed on the base." Because Myhre, Fittery and Pollak do not disclose such missing element, the Myhre/Fittery and Myhre/Fittery/Pollak combinations cannot render unpatentable Claim 1 and its dependent claims.

No fee is believed due. Nonetheless, the Commissioner is authorized to charge payment of any fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

In view of the foregoing, Claims 1-6, 8-9, 11, 17 and 21-23 are patentable and the application is believed to be in condition for formal allowance.

Respectfully submitted,



Adan Ayala  
PTO Reg. No. 38,373  
Attorney for Applicants

The Black & Decker Corporation  
701 East Joppa Road  
Towson, Maryland 21286  
(410) 716-2368